event of a director or manager contravening the provisions of subsection (1) or (3) by advancing the Bank's money upon any of these forbidden securities. In such a case it provides firstly that the offending director or manager shall be punished by fine and secondly that the general body of shareholders etc. shall be protected so far as possible by rendering the director or manager liable to make good out of his own pocket any deficit which there may be after realizing the securities which he ought not to have accepted. The subsection clearly contemplates realization of such securities which would seem to involve the Bank having a lien upon them.

In my view the effect of subsections (3) and (4) is shortly this:—A manager or director ought not to advance on the security of the Bank's shares but if he does he incurs a personal liability up to the amount of the inadequacy of those shares as security.

The amendment to Article 29 does not conflict with section 111 but appears to have the same object namely to afford a further safeguard to the interests of the shareholders.

For these reasons I find myself unable to agree with the learned trial Judge that the amendment was *ultra vires.*

I can see no reason why the Bank by its Articles should not create for itself this additional protection. A shareholder may have obtained a loan in the same way as any outsider on the security of title deeds. Can there be any reason why the Bank should not as additional protection create a lien on his shares?

It seems to me that Article 5 cannot have been intended to prevent the Bank from dealing with its shareholders in the ordinary way of business nor can Section 111 (3) reinforcing Article 5 have been intended to prevent a Bank from allowing customers to overdraw if they happen to be shareholders or to deprive the Bank of the additional protection of a lien if a lien is conferred by the Articles.

In my view section 111 and Article 29 as amended can be read together with a perfectly reasonable and natural meaning their joint effect being that the Bank must not lend on the security of its shares but if a person to whom the Bank has lent on other security happens to be or to become a shareholder the Bank for its further protection shall have a lien on his shares.

For these reasons I would allow the appeal.

Appeal dismissed.

Solicitors for the Bank—*Braddell Bros.*

[ORIGINAL BANKRUPTCY JURISDICTION]

RE CHONG FONG SHEN.
EX PARTE PHUMAN SINGH.

[SELANGOR BANKRUPTCY No. 182 of 1932]

Bankruptcy—Costs in bankruptcy—set off.

A judgment creditor caused a bankruptcy notice to be issued and served upon his debtor. The debtor moved to have the notice set aside and his application was allowed with costs. The creditor then applied for a Stay of execution as to these costs, pending ascertainment of the balance due on his decree, with a view to setting-off the amounts payable under the order for costs and the decree against each other.

Held, that the English rule that there can be no set-off of costs in bankruptcy proceedings between a creditor and his debtor was a rule of practice which should not be applied by the Courts of this country.

Veerasamy for the debtor. The set-off ought not to be allowed. Costs in bankruptcy proceedings cannot be set-off against a judgment debt. *In re Drummond* (1909) 2 K.B. 622.

Joaquim for the creditor. According to the practice in England, the set-off would not be allowed; but this is a rule of practice and not of law. The practice originated before the passing of the Judicature Acts when the various Courts were separate and distinct entities. Rule 353 of the English Bankruptcy Rules directs that "when no other provision is made by the Act or these Rules the present law procedure and practice in bankruptcy matters shall, in so far as applicable, remain in force," and this Rule preserved the old practice in England. The constitution and history of our Courts is different from that of the Supreme Court of Judicature in England. Judges in England have expressed doubts as to the justice of the practice. The Court is not bound to and should not apply the practice in this country. *re Adams* 14 C.D. 37; *re Bassett* (1896) 1 Q.B. 219; *re a Debtor* (1907) 2 K.B. 896.

The Hon. Mr. S. Veerasamy (in reply):—

By Section 16 (ii) of the Courts Enactment, 1918, in cases not provided for the practice and procedure of the Court of Appeal in England shall be followed.

MUDIE, J.—This is not a matter of the practice of the Court of Appeal, but of the High Court in Bankruptcy. It is a rule of practice not necessarily applicable in this country, and I do not think that it ought to be applied. In my view the costs ought to be set-off against the decree. There will be a stay of execution for four weeks to enable the balance due on the decree to be ascertained.

Order Accordingly.

Solicitors for the Creditor—*Pooley & Co.*

Solicitor for the Debtor—*S. Veerasamy.*